



## Michigan Supreme Court

State Court Administrative Office

### Trial Court Services Division

Michigan Hall of Justice

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Jennifer Warner  
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## MEMORANDUM

DATE: February 5, 2015

TO: Circuit and District Court Judges  
Circuit and District Court Administrators/Clerks  
County Clerks

FROM: Bobbi Morrow

RE: Amendments to Set Aside Conviction Statutes

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PA 463 of 2014 amends MCL 780.621 and 780.623, affecting applications to set aside convictions. Except for (7), the statutory changes to MCL 780.621 allow a person who was convicted of not more than 1 felony and not more than 2 misdemeanors to set aside the felony or allow a person who was convicted of not more than 2 misdemeanors and no other felony or misdemeanor offenses to have one or both misdemeanors set aside. MCL 780.621(1)(a), (b). Further, the amendments permit victims of human trafficking to have select prostitution offenses set aside if he or she committed the offense because they were a victim of human trafficking. MCL 780.621(4). The amendments require a conviction that was deferred and dismissed to be considered a misdemeanor for purposes of eligibility and expand the list of convictions that cannot be set aside. MCL 780.621(2), (3).

The timeframe for making an application to set aside conviction has also changed. The application may be filed 5 or more years after whichever of the following events occurred *last*: imposition of sentence, completion of probation, discharge from parole, or completion of a term of imprisonment. MCL 780.621(5). However, in the case of prostitution offenses committed as a result of the applicant being a victim of human trafficking, the application may be filed at any time following the conviction to be set aside. MCL 780.621(7).

If an application is denied, the applicant is prohibited from filing another application for 3 years unless the court specifies an earlier date in the order denying the petition. MCL 780.621(6).

The application must now include a certified record of each conviction to be set aside and a list of all actions that have been deferred and dismissed. MCL 780.621(8)(b),(d). The applicant only needs to submit 1 set of fingerprints to the department of state police. MCL 780.621(9).

If the applicant is seeking to have a conviction or convictions set aside pursuant to subsection (4) (victims of human trafficking), the application must include a statement that he or she meets the criteria under that section and a statement of the facts supporting the contention that the conviction was a direct result of being a victim of human trafficking. MCL 780.621(8)(g). Further, these applicants must prove to the court, by a preponderance of the evidence, that the conviction was a direct result of his or her being a victim of human trafficking. MCL 780.621(13).

The definition section of 780.621(16) was expanded to define more terms as used within the statute.

MCL 780.623 now includes the department of corrections in the list of entities that may have access to the nonpublic record retained by the department of state police for the specific purposes listed in subsections (2)(a)-(f). MCL 780.623(2).

Additionally, the victim is now exempt from the criminal penalty for disclosing information concerning an expunged conviction. MCL 780.623(5).

Attached is a quick reference chart that highlights the changes to the statutes in bold. The first column represents the manner in which convictions were set aside under the former statutes and the second column indicates the manner in which convictions are set aside under the amended statutes.

The new Application to Set Aside Conviction (MC 227) and instructions is available at <http://courts.mi.gov/Administration/SCAO/Forms/courtforms/generalcriminal/MC227.pdf>.

If you have any questions, please contact Bobbi Morrow at [morrowb@courts.mi.gov](mailto:morrowb@courts.mi.gov) or 517-373-2173 or Julia Norton at [nortonj@courts.mi.gov](mailto:nortonj@courts.mi.gov) or 517-373-3756.

Former	Current (PA 463 of 2014)
A person who is convicted of not more than 1 offense (and 2 minor offenses) may file an application for the entry of an order setting aside the conviction. MCL 780.621(1)	A person who is convicted of not more than 1 offense may file an application for the entry of an order setting aside 1 or more convictions as follows: <b>(a) A person convicted of not more than 1 felony and not more than 2 misdemeanors may petition to set aside the felony.</b> <b>(b) A person convicted of not more than 2 misdemeanor offenses may petition to set aside 1 or both misdemeanors.</b> <b>(c) A person convicted of CSC 4 (MCL 750.520e) before 1/12/15 may petition to set aside the conviction if the individual has not been convicted of another offense, other than 2 minor offenses. MCL 780.621(1)</b>
	<b>A conviction that was deferred and dismissed,<sup>1</sup> whether a felony or misdemeanor, will be considered a misdemeanor conviction for purposes of determining whether a person is eligible to have a conviction set aside. MCL 780.621(2)</b>
A judge shall not set aside a conviction for any of the following: <b>(a) A felony (or attempted felony) where the maximum punishment is life imprisonment.</b> <b>(b) A violation (or attempt violation) of child sexually abusive activity or material<sup>2</sup>, using a computer to solicit a minor<sup>3</sup>, CSC 2nd degree<sup>4</sup>, CSC 3rd degree<sup>5</sup>, and assault with intent to commit CSC involving penetration<sup>6</sup>.</b> <b>(c) A traffic offense</b> MCL 780.621(3)	A judge shall not set aside a conviction for any of the following: <b>(a) A felony (or attempted felony) where the maximum punishment is life imprisonment.</b> <b>(b) A violation (or attempted violation) of child sexually abusive activity or material, using a computer to solicit a minor, CSC 2nd degree, CSC 3rd degree, assault with intent to commit CSC involving penetration, <b>child abuse in 2nd degree<sup>7</sup>, and child abuse in the presence of another child<sup>8</sup>.</b></b> <b>(c) A violation for CSC 4th degree<sup>9</sup> if the conviction occurred after the effective date of the amendment.</b> <b>(d) A traffic offense, including Operating While Intoxicated.</b> <b>(e) A felony conviction for domestic violence, if the person has a previous misdemeanor conviction for domestic violence.</b> <b>(f) A violation for human trafficking<sup>10</sup>. MCL 780.621(3)</b>

<sup>1</sup> Under MCL 436.1703 (Minor In Possession); MCL 600.170 (Drug Court); MCL 600.1209 (Veteran Treatment Court); MCL 762.13 (Holmes Youthful Trainee Act); MCL 769.4a (Domestic Violence); MCL 333.7411 (Controlled Substances); MCL 750.350a (Parental Kidnapping); MCL 750.430 (Licensed Health Care Professional); or any other law of this state or political subdivision similar in nature and applicability that provide for the deferral or dismissal of a felony or misdemeanor charge.

<sup>2</sup> MCL 750.145c

<sup>3</sup> MCL 750.145d

<sup>4</sup> MCL 750.520c

<sup>5</sup> MCL 750.520d

<sup>6</sup> MCL 750.520g

<sup>7</sup> MCL 750.136(b)(3)

<sup>8</sup> MCL 750.136d(1)(b) or (c)

<sup>9</sup> MCL 750.520e

<sup>10</sup> MCL 750.462A to 750.462J and 750.543A to 750.543Z

	<p><b>A person who is convicted of a prostitution offense<sup>11</sup> may apply to have that conviction or convictions set aside at any time following conviction if he or she committed the offense as a direct result of his or her being a victim of human trafficking. MCL 780.621(4) &amp; (7)</b></p>
<p>An application shall not be filed until at least 5 years following imposition of the sentence for the conviction that the applicant seeks to set aside or 5 years following completion of any term of imprisonment for that conviction, whichever occurs later. MCL 780.621(3)</p>	<p>An application shall only be filed 5 or more years after whichever of the following events occur last:</p> <ul style="list-style-type: none"> <li><b>(a)</b> Imposition of the sentence for the conviction that the applicant seeks to set aside.</li> <li><b>(b)</b> Completion of probation imposed for the conviction that the applicant seeks to set aside.</li> <li><b>(c)</b> Discharge from parole imposed for the conviction that the applicant seeks to set aside.</li> <li><b>(d)</b> Completion of any term of imprisonment imposed for the conviction that the applicant seeks to set aside.</li> </ul> <p>MCL 780.621(5)</p>
	<p><b>If a petition is denied, a person shall not file another petition concerning the same conviction until 3 years after the date the court denies the previous petition, unless the court specifies an earlier date. MCL 780.621(6)</b></p>
<p>The application is invalid unless it contains the following information and is signed under oath by the person whose conviction is to be set aside:</p> <ul style="list-style-type: none"> <li>(a) The full name and current address of the applicant.</li> <li>(b) A certified record of the conviction that is to be set aside.</li> <li>(c) A statement that the applicant has not been convicted of an offense other than the conviction sought to be set aside as a result of this application, and not more than 2 minor offenses, if applicable.</li> <li>(d) A statement as to whether the applicant has previously filed an application to set aside this or any other conviction and, if so, the disposition of the application.</li> <li>(e) A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United State or in any other country.</li> <li>(f) A consent to the use of the nonpublic record created under section 3.</li> </ul> <p>MCL 780.621(4)</p>	<p>An application is invalid unless it contains the following information and is signed under oath by the person whose conviction <b>or convictions</b> are to be set aside:</p> <ul style="list-style-type: none"> <li><b>(a)</b> The full name and current address of the applicant.</li> <li><b>(b)</b> A certified record of <b>each</b> conviction that is to be set aside.</li> <li><b>(c)</b> A statement that the applicant has not been convicted of an offense other than the conviction(s) sought to be set aside as a result of this application, and <b>any nondisqualifying misdemeanor convictions described in subsection (1)(A).</b></li> <li><b>(d)</b> A statement listing all actions enumerated in subsection 2 that were initiated against the applicant and have been dismissed.</li> <li><b>(e)</b> A statement as to whether the applicant has previously filed an application to set aside this or other convictions and, if so, the disposition of the application.</li> <li><b>(f)</b> A statement as to whether the applicant has any other criminal charge pending against him or her in any court in the United States or in any other country.</li> <li><b>(g)</b> If setting aside under subsection (4), a statement that the applicant meets the criteria of subsection (4) and a statement of the facts supporting his or her contention that the conviction was a direct result of his or her being a victim of human trafficking.</li> <li><b>(h)</b> A consent to the use of the nonpublic record created under section 3.</li> </ul> <p>MCL 780.621(8)</p>

<sup>11</sup> Under MCL 750.448, MCL 750.449, or MCL 750.450

<p>Definitions included:</p> <ul style="list-style-type: none"> <li>(a) Assaultive crime</li> <li>(b) Minor offense</li> <li>(c) Serious misdemeanor</li> <li>(d) Victim</li> </ul> <p>MCL 780.621(10)</p>	<p>Definitions included:</p> <ul style="list-style-type: none"> <li>(a) Assaultive crime</li> <li><b>(b) Domestic violence</b></li> <li><b>(c) Felony</b></li> <li><b>(d) Human Trafficking</b></li> <li><b>(e) Indian Tribe</b></li> <li><b>(f) Misdemeanor</b></li> <li><b>(g) Operating While Intoxicated</b></li> <li>(h) Serious misdemeanor</li> <li>(i) Victim</li> </ul> <p>MCL 780.621(16)</p>
<p>The nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request. MCL 780.623(2)</p>	<p>The nonpublic record shall be made available only to a court of competent jurisdiction, an agency of the judicial branch of state government, <b>the department of corrections</b>, a law enforcement agency, a prosecuting attorney, the attorney general, or the governor upon request, for the specific purposes as outlined in (2)(a) through (f). MCL 780.623(2)</p>
<p>Except as provided in subsection (2), a person, other than the applicant, who knows or should have known that a conviction was set aside under this section and who divulges, uses, or publishes information concerning a conviction set aside under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both. MCL 780.623(5)</p>	<p>Except as provided in subsection (2), a person, other than the applicant <b>or a victim</b><sup>12</sup>, who knows or should have known that a conviction was set aside under this section and who divulges, uses, or publishes information concerning a conviction set aside under this section is guilty of a misdemeanor punishable by imprisonment for not more than 90 days or a fine of not more than \$500.00, or both. MCL 780.623(5)</p>

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<sup>12</sup> Defined in MCL 780.623(6)